




UNITED STATES PATENT AND TRADEMARK OFFICE


UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,020	09/12/2003	Ruth L. Levy	K1084/20040	6816
56679	7590	03/29/2006	EXAMINER	
GOSZ AND PARTNERS, LLP 450 BEDFORD STREET LEXINGTON, MA 02420			VANIK, DAVID L	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,020

Applicant(s)

LEVY ET AL.

Examiner

David L. Vanik

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/29/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49, 52, 53, 56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) 1-47, 56 and 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48, 49, 52 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of the Applicants' Remarks filed on 12/29/2005.

The 35 USC §103 rejections over US patent 4,842,593 ('593) in view of 3,683,916 ('916) are hereby **maintained**.

MAINTAINED REJECTIONS:

The following is a list of maintained rejections:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 48-49 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 4,842,593 ('593) in view of 3,683,916 ('916).

'593 disclose absorbent articles comprising a buffering system and a microbial agent (abstract). According to '593, the absorbent article can comprise a backsheet, an intermediate absorbent core layer, and a topsheet (column 3, lines 5-14). The topsheet layer can comprise an anionic surface (column 4, lines 26-34 and column 13, lines 31-45). A specific type of anionic surface used by '593 is rayon (column 4, lines 26-34 and column 13, lines 31-45). Like the instant application, biguanides can be used to coat the topsheet surface of diapers (column 11, lines 1-48; column 13, lines 31-45; and Claim 8). The biguanides, as a member of the pH system, can be incorporated on or in the topsheet or flexible substrate (column 13, lines 31-45). Since the pH system can be incorporated on or in topsheet or flexible substrate by a gel-type coating, absent a showing to the contrary, it is the examiner's position that the biguanides are non-covalently associated with the anionic surface (column 5, lines 48-60; column 10, line 57 – column 12, line 65; and Claim 8).

'593 does not teach a composition comprising an anionic surfactant attached to the topsheet of an absorbent article such as a diaper.

Art Unit: 1615

'916 teach a disposable multi-layered diaper of high absorptive capacity (abstract). According to '916, it is advantageous to treat a "facing layer" or topsheet layer with a wetting agent (column 5, line 58 – column 6, line 6). Wetting agents, such as anionic surfactants, can be used to treat a "facing layer" or topsheet layer by modulating the amount of urine capable of penetrating into the diaper topsheet (column 5, line 58 – column 6, line 6). Because an anionic surfactant can advantageously modulate the amount of urine penetration on the topsheet or "facing layer" of a diaper, one of ordinary skill in the art would have been motivated to add an anionic surfactant to the topsheet layer of the composition proposed by '593. Based on the teachings of '916, there is a reasonable expectation that anionic surfactants, when added to the topsheet layer of a diaper, can effectively modulate urine penetration. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate an anionic surfactant in the invention advanced by '593 in view of the teachings of '916.

Response to Arguments

Applicant's arguments filed on 12/29/2005 have been fully considered but they are not persuasive. In response to the 9/23/2005 Non-Final Rejection, Applicant has asserted that, given the teachings of '593 and '916, one of ordinary skill in the art at the time the invention was made would not have the requisite motivation to add an anionic

surfactant to the biguanide-based topsheet composition advanced by '593. The examiner respectfully disagrees with this assertion.

As set forth above, '593 disclose absorbent articles comprising a buffering system and a microbial agent (abstract). According to '593, the absorbent article can comprise a backsheet, an intermediate absorbent core layer, and a topsheet (column 3, lines 5-14). As set forth in '593, it is advantageous to use biguanides to coat the topsheet surface of diapers (column 11, lines 1-48; column 13, lines 31-45; and Claim 8). With respect to this, '593 point to only two general preferred types of antimicrobial classes suitable for use in the invention: nitrogen-based antimicrobials and bis-biguanides. Thus, biguanides are preferred antimicrobial agents in the invention advanced by '593 and are not selected from a long list of potential agents.

The examiner respectfully asserts that there is motivation to add an anionic surfactant to the topsheet layer of the biguanide-composition advanced by '593. This is because, according to '916, anionic surfactants (wetting agents) can be used to treat a "facing layer" or topsheet layer of a composition by modulating the amount of urine capable of penetrating into the diaper topsheet (column 5, line 58 – column 6, line 6). Thus, the motivation of adding an anionic surfactant to the topsheet layer of a composition revolves around the ability of said anionic surfactant to modulate urine penetration. The examiner respectfully submits that the fact that the anionic surfactant and biguanide compound would form a noncovalent bond is only a secondary consideration as one of ordinary skill in the art at the time the invention was made would be motivated to add an anionic surfactant to the biguanide-based topsheet composition

Art Unit: 1615

advanced by '593 in an attempt to modulate urine penetration. That is, the modulation of urine penetration, and not the formation of a noncovalent bond between biguanide and the anionic surfactant, appears to be the motivating issue. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate an anionic surfactant in the invention advanced by '593 in view of the teachings of '916.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Correspondence

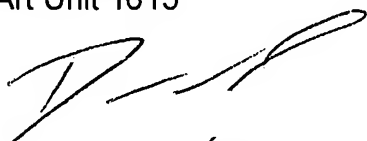
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

Art Unit: 1615

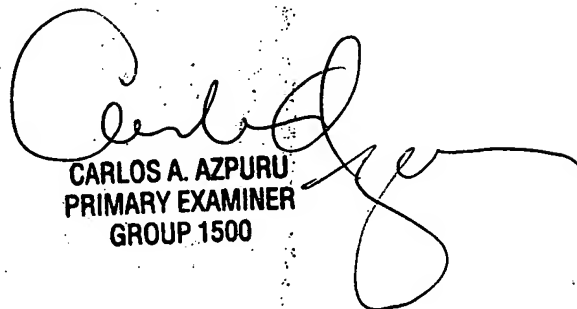
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at (571) 272-0588. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik, Ph.D.
Art Unit 1615



3/20/06



CARLOS A. AZPURU
PRIMARY EXAMINER
GROUP 1500